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"MANDATORY CHAMBERS COPY"

NOTE CHANGES MADE BY THE COURT

6 Attorneys for Defendant and Third-Party  
Plaintiff BURLINGTON COAT  
7 FACTORY DIRECT CORPORATION

8 UNITED STATES DISTRICT COURT

9 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

10

11 UNICOLORS, INC., a California  
Corporation,

12

Plaintiff,

13

vs.

14

15 COTTON EXPRESS CORPORATION,  
a New Jersey Corporation; 10 SPOT OF  
16 KEARNY, LLC, a New Jersey Limited  
Liability Company; BURLINGTON  
COAT FACTORY DIRECT  
17 CORPORATION, a New Jersey  
Corporation; and DOES 1-10, inclusive,

18

Defendants.

19

20 AND RELATED THIRD-PARTY  
CLAIM.

21

22

23 1. A. PURPOSES AND LIMITATIONS

24 Discovery in this action is likely to involve production of confidential,  
25 proprietary, or private information for which special protection from public  
26 disclosure and from use for any purpose other than prosecuting this litigation may  
27 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to  
28 enter the following Stipulated Protective Order. The parties acknowledge that this

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Case No. 2:17-cv-02744-SVW-AGR

[PROPOSED] STIPULATED  
PROTECTIVE ORDER

Judge: Hon. Stephen V. Wilson

Action Filed: April 11, 2017  
Trial Date: November 7, 2017

NOTE CHANGES MADE BY THE COURT

1 Order does not confer blanket protections on all disclosures or responses to  
2 discovery and that the protection it affords from public disclosure and use extends  
3 only to the limited information or items that are entitled to confidential treatment  
4 under the applicable legal principles. The parties further acknowledge, as set forth in  
5 Section 12.3, below, that this Stipulated Protective Order does not entitle them to  
6 file confidential information under seal; Civil Local Rule 79-5 sets forth the  
7 procedures that must be followed and the standards that will be applied when a party  
8 seeks permission from the court to file material under seal.

9       B. GOOD CAUSE STATEMENT

10 This action is likely to involve trade secrets, customer and pricing lists and  
11 other valuable research, development, commercial, financial, technical and/or  
12 proprietary information for which special protection from public disclosure and from  
13 use for any purpose other than prosecution of this action is warranted. Such  
14 confidential and proprietary materials and information consist of, among other things,  
15 confidential business or financial information, information regarding purchase and  
16 sale prices of fabric or garments by suppliers, manufacturers, importers, distributors  
17 or fashion retailers, information regarding confidential business practices, or other  
18 confidential research, development, or commercial information regarding the  
19 creation, purchase or sale of graphics used on textiles and garments, or other  
20 confidential commercial information (including information implicating privacy  
21 rights of third parties), information generally unavailable to the public, or which may  
22 be privileged or otherwise protected from disclosure under state or federal statutes,  
23 court rules, case decisions, or common law. Accordingly, to expedite the flow of  
24 information, to facilitate the prompt resolution of disputes over confidentiality of  
25 discovery materials, to adequately protect information the parties are entitled to keep  
26 confidential, to ensure that the parties are permitted reasonable necessary uses of  
27 such material in preparation for and in the conduct of trial, to address their handling  
28 at the end of the litigation, and serve the ends of justice, a protective order for such

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1 information is justified in this matter. It is the intent of the parties and the Court that  
 2 information will not be designated as confidential for tactical reasons and that  
 3 nothing shall be so designated without a good faith belief that it has been maintained  
 4 in a confidential, non-public manner, and there is good cause why it should not be  
 5 part of the public record of this case.

6 Examples of confidential information that the parties may seek to protect  
 7 from unrestricted or unprotected disclosure include:

- 8                 (a) Information that is the subject of a non-disclosure or  
                    confidentiality agreement or obligation;
- 10                 (b) The names, or other information tending to reveal the identity of  
                    a party's supplier, designer, distributor, or customer;
- 12                 (c) Agreements with third-parties, including license agreements,  
                    distributor agreements, manufacturing agreements, design agreements, development  
                    agreements, supply agreements, sales agreements, or service agreements;
- 15                 (d) Research and development information;
- 16                 (e) Proprietary engineering or technical information, including  
                    product design, manufacturing techniques, processing information, drawings,  
                    memoranda and reports;
- 19                 (f) Information related to budgets, sales, profits, costs, margins,  
                    licensing of technology or designs, product pricing, or other internal  
                    financial/accounting information, including non-public information related to  
                    financial condition or performance and income or other non-public tax information;
- 23                 (g) Information related to internal operations including personnel  
                    information;
- 25                 (h) Information related to past, current and future product  
                    development;
- 27                 (i) Information related to past, current and future market analyses  
                    and business and marketing development, including plans, strategies, forecasts and

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1 competition; and

2 (j) Trade secrets (as defined by the jurisdiction in which the  
3 information is located).

4 Unrestricted or unprotected disclosure of such confidential technical,  
5 commercial or personal information would result in prejudice or harm to the  
6 producing party by revealing the producing party's competitive confidential  
7 information, which has been developed at the expense of the producing party and  
8 which represents valuable tangible and intangible assets of that party. Additionally,  
9 privacy interests must be safeguarded. Accordingly, the parties respectfully submit  
10 that there is good cause for the entry of this Protective Order.

11 The parties agree, subject to the Court's approval, that the following terms  
12 and conditions shall apply to this civil action.

13 2. DEFINITIONS

14 2.1 Action: This pending federal law suit entitled *Unicolors, Inc. v. Cotton*  
15 *Express Corp., et al.* (and related Thirty-Party Claim), Case No. 2:17-cv-02744-  
16 SVW-AGR.

17 2.2 Challenging Party: a Party or Non-Party that challenges the designation  
18 of information or items under this Order.

19 2.3 Counsel: Outside Counsel of Record and House Counsel (as well as  
20 their support staff).

21 2.4 Designating Party: a Party or Non-Party that designates information or  
22 items that it produces in disclosures or in responses to discovery as  
23 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
24 ONLY".

25 2.5 Disclosure or Discovery Material: all items or information, regardless  
26 of the medium or manner in which it is generated, stored, or maintained (including,  
27 among other things, testimony, transcripts, and tangible things), that are produced or  
28 generated in disclosures or responses to discovery in this matter.

1           2.6   Expert: a person with specialized knowledge or experience in a matter  
 2 pertinent to the litigation who has been retained by a Party or its counsel to serve as  
 3 an expert witness or as a consultant in this Action. This definition includes a  
 4 professional jury or trial consultant retained in connection with this litigation. The  
 5 expert witness or consultant may not be a past or a current employee of the Party  
 6 (including any affiliates or related entities) adverse to the Party engaging the expert  
 7 witness or consultant or someone who at the time of retention is anticipated to  
 8 become an employee of the Party (including any affiliates or related entities)  
 9 adverse to the Party engaging the expert witness or consultant.

10          2.7   House Counsel: attorneys who are employees of a party to this Action.  
 11 House Counsel does not include Outside Counsel of Record or any other outside  
 12 counsel.

13          2.8   Non-Party: any natural person, partnership, corporation, association, or  
 14 other legal entity not named as a Party to this action.

15          2.9   Outside Counsel of Record: attorneys who are not employees of a Party  
 16 to this Action but are retained to represent or advise a Party to this Action and have  
 17 appeared in this Action on behalf of that Party or are affiliated with a law firm  
 18 which has appeared on behalf of that Party, and includes support staff.

19          2.10   Party: any party to this Action, including all of its officers, directors,  
 20 employees, consultants, retained experts, and Outside Counsel of Record (and their  
 21 support staffs).

22          2.11   Producing Party: a Party or Non-Party that produces Disclosure or  
 23 Discovery Material in this Action.

24          2.12   Professional Vendors: persons or entities that provide litigation support  
 25 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
 26 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
 27 and their employees and subcontractors.

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1           2.13 Protected Material: any Disclosure or Discovery Material that is  
 2 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
 3 EYES ONLY”.

4           2.14 “CONFIDENTIAL” Information or Items: information (regardless of  
 5 how it is generated, stored or maintained) or tangible things that qualify for  
 6 protection under Federal Rule of Civil Procedure 26(c), and as specified above in  
 7 the Good Cause Statement.

8           2.15 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”: any  
 9 Disclosure or Discovery Material or such portion of such material that the  
 10 Designating Party has a reasonable belief that the information disclosed, if known to  
 11 one or more Parties in the case, would have a reasonable chance of putting the  
 12 Designating Party to a competitive disadvantage or otherwise result in the disclosure  
 13 of sensitive proprietary information that could cause future harm. Notwithstanding  
 14 the terms of this agreement, Plaintiff’s attorney is entitled to disclose to Plaintiff the  
 15 total revenue and gross profit data disclosed in this action, as well as the names of  
 16 any Parties responsible for distributing the infringing product at issue, or any  
 17 components of said product.

18           2.16 Receiving Party: a Party that receives Disclosure or Discovery Material  
 19 from a Producing Party.

20           3. SCOPE

21           The protections conferred by this Stipulation and Order cover not only  
 22 Protected Material (as defined above), but also (1) any information copied or  
 23 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
 24 compilations of Protected Material; and (3) any testimony, conversations, or  
 25 presentations by Parties or their Counsel that might reveal Protected Material.

26           Any use of Protected Material at trial shall be governed by the orders of the  
 27 trial judge. This Order does not govern the use of Protected Material at trial.

28           ///

1    4. DURATION

2       Even after the final disposition of this Action, the confidentiality obligations  
 3 imposed by this Order shall remain in effect until a Designating Party agrees  
 4 otherwise in writing or a court order otherwise directs. Final disposition shall be  
 5 deemed to be the latter of (1) dismissal of all claims and defenses in this Action,  
 6 with or without prejudice, (2) final judgment herein after the completion and  
 7 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,  
 8 including the time limits for filing any motions or applications for extension of time  
 9 pursuant to applicable law.

10    5. DESIGNATING PROTECTED MATERIAL

11       5.1 Exercise of Restraint and Care in Designating Material for Protection.  
 12      Each Party or Non-Party that designates information or items for protection under  
 13 this Order must take care to limit any such designation to specific material that  
 14 qualifies under the appropriate standards. The Designating Party must designate for  
 15 protection only those parts of material, documents, items, or oral or written  
 16 communications that qualify so that other portions of the material, documents,  
 17 items, or communications for which protection is not warranted are not swept  
 18 unjustifiably within the ambit of this Order. Designating Party's counsel shall make  
 19 a good faith determination that the information warrants such protection.

20       Mass, indiscriminate, or routinized designations are prohibited. Designations  
 21 that are shown to be clearly unjustified or that have been made for an improper  
 22 purpose (e.g., to unnecessarily encumber the case development process or to impose  
 23 unnecessary expenses and burdens on other parties) may expose the Designating  
 24 Party to sanctions.

25       If it comes to a Designating Party's attention that information or items that it  
 26 designated for protection do not qualify for protection, that Designating Party must  
 27 promptly notify all other Parties that it is withdrawing the inapplicable designation.

28       // /

1       5.2 Manner and Timing of Designations. Except as otherwise provided in  
 2 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
 3 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
 4 under this Order must be clearly so designated before the material is disclosed or  
 5 produced.

6              Designation in conformity with this Order requires:

7              (a) for information in documentary form (e.g., paper or electronic  
 8 documents, but excluding transcripts of depositions or other pretrial or trial  
 9 proceedings), that the Producing Party affix at a minimum, the legend  
 10 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
 11 ONLY” (hereinafter “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
 12 ATTORNEYS’ EYES ONLY” legend), to each page that contains protected  
 13 material. If only a portion or portions of the material on a page qualifies for  
 14 protection, the Producing Party also must clearly identify the protected portion(s)  
 15 (e.g., by making appropriate markings in the margins).

16              A Party or Non-Party that makes originals or copies of documents or  
 17 materials available for inspection need not designate them for protection until after  
 18 the inspecting Party has indicated which documents or materials it would like copied  
 19 and produced. During the inspection and before the designation, all of the material  
 20 made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –  
 21 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the  
 22 documents it wants copied and produced, the Producing Party must determine which  
 23 documents, or portions thereof, qualify for protection under this Order. Then, before  
 24 producing the specified documents, the Producing Party must affix the  
 25 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
 26 ONLY” legend to each page that contains Protected Material. If only a portion or  
 27 portions of the material on a page qualifies for protection, the Producing Party also  
 28 must clearly identify the protected portion(s) (e.g., by making appropriate markings

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1 in the margins) and must specify, for each portion, the level of protection being  
 2 asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –  
 3 ATTORNEYS' EYES ONLY").

4 *ACR*  
 5 (b) for testimony given in depositions or in other pretrial or trial  
 6 proceedings, that the Designating Party or Non-Party offering or sponsoring the  
 7 testimony shall identify the Disclosure or Discovery Material on the record, before  
 8 the close of the deposition, hearing or other proceeding, or within 21 days after  
 9 receiving the transcript of the deposition or other testimony, and further, specify any  
 10 portions of the testimony that qualify as "CONFIDENTIAL" or "HIGHLY  
 11 CONFIDENTIAL – ATTORNEYS' EYES ONLY". During the 21 day period,  
 12 counsel for the Parties shall treat the entire testimony and transcript as if it had been  
 13 designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY".

14 Pages of transcribed deposition or other testimony or exhibits to such  
 15 testimony that reveal Protected Material must be separately bound by the court  
 16 reporter, who must affix to the top of each such page the legend  
 17 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
 18 ONLY", as instructed by the Party or Non-Party offering or sponsoring the witness  
 19 or presenting the testimony, and may not be disclosed to anyone except as permitted  
 20 under this Stipulated Protective Order. Where testimony is designated during a  
 21 deposition, the Designating Party shall have the right to exclude, at those portion(s)  
 22 of the deposition, all persons not authorized by the terms of this Order to receive  
 23 such designated material.

24 (c) for information produced in some form other than documentary  
 25 and for any other tangible items, that the Producing Party affix in a prominent place  
 26 on the exterior of the container or containers in which the information is stored the  
 27 legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'  
 28 EYES ONLY". If only a portion or portions of the information warrants protection,  
 the Producing Party, to the extent practicable, shall identify the protected portion(s),

1 specifying whether they qualify as "CONFIDENTIAL" or as "HIGHLY  
2 CONFIDENTIAL – ATTORNEYS' EYES ONLY".

3       5.3   Inadvertent Failures to Designate. If timely corrected, an inadvertent  
4 failure to designate qualified information or items as "CONFIDENTIAL" or  
5 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" does not, standing  
6 alone, waive the Designating Party's right to secure protection under this Order for  
7 such material. Upon timely correction of a designation, the Receiving Party must  
8 make reasonable efforts to assure that the material is treated in accordance with the  
9 provisions of this Order.

10      6.    CHALLENGING CONFIDENTIALITY DESIGNATIONS

11       6.1   Timing of Challenges. Any Party or Non-Party may challenge a  
12 designation of confidentiality at any time that is consistent with the Court's  
13 Scheduling Order.

14       6.2   Meet and Confer. The Challenging Party shall initiate the dispute  
15 resolution process in good faith under Local Rule 37.1 et seq. A Challenging Party  
16 may proceed to the next stage of the challenge process only if it has engaged in the  
17 meet-and-confer process first.

18       6.3   Joint Stipulation. Any challenge submitted to the Court shall be via a  
19 joint stipulation pursuant to Local Rule 37-2.

20       6.4   The burden of persuasion in any such challenge proceeding shall be on  
21 the Designating Party. Frivolous challenges, and those made for an improper  
22 purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
23 parties) may expose the Challenging Party to sanctions. Unless the Designating  
24 Party has waived or withdrawn the confidentiality designation, all parties shall  
25 continue to afford the material in question the level of protection to which it is  
26 entitled under the Producing Party's designation until the Court rules on the  
27 challenge.

28       ///

1     7. ACCESS TO AND USE OF PROTECTED MATERIAL

2         7.1 Basic Principles. A Receiving Party may use Protected Material that is  
3 disclosed or produced by another Party or by a Non-Party in connection with this  
4 Action only for prosecuting, defending, or attempting to settle this Action. Such  
5 Protected Material may be disclosed only to the categories of persons and under the  
6 conditions described in this Order. When the Action has been terminated, a  
7 Receiving Party must comply with the provisions of section 13 below ("FINAL  
8 DISPOSITION").

9             Protected Material must be stored and maintained by a Receiving Party at a  
10 location and in a secure manner that ensures that access is limited to the persons  
11 authorized under this Order.

12         7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless  
13 otherwise ordered by the Court or permitted in writing by the Designating Party, a  
14 Receiving Party may disclose any information or item designated  
15 "CONFIDENTIAL" only to:

16                 (a) the Receiving Party's Outside Counsel of Record in this Action,  
17 as well as employees of said Outside Counsel of Record to whom it is reasonably  
18 necessary to disclose the information for this Action;

19                 (b) the officers, directors, and employees (including House Counsel)  
20 of the Receiving Party to whom disclosure is reasonably necessary for this Action  
21 and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit  
22 A);

23                 (c) Other employees of the Receiving Party to whom disclosure is  
24 reasonably necessary for this Action and who are bound by internal confidentiality  
25 obligations as part of their employment or who have signed the "Acknowledgment  
26 and Agreement to Be Bound" (Exhibit A);

27                 (d) Experts (as defined in this Order) of the Receiving Party to  
28 whom disclosure is reasonably necessary for this Action and who have signed the

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1 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

2 (e) the Court and its personnel;

3 (f) court reporters and their staff;

4 (g) professional jury or trial consultants, mock jurors, and

5 Professional Vendors to whom disclosure is reasonably necessary for this Action  
6 and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit  
7 A);

8 (h) the author or recipient of a document containing the information  
9 or a custodian or other person who otherwise possessed or knew the information;

10 (i) during their depositions, witnesses, and attorneys for witnesses,  
11 in the Action to whom disclosure is reasonably necessary provided: (1) the deposing  
12 party requests that the witness sign the "Acknowledgment and Agreement to Be  
13 Bound" attached as Exhibit A hereto; and (2) they will not be permitted to keep any  
14 confidential information unless they sign the "Acknowledgment and Agreement to  
15 Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered  
16 by the Court. Pages of transcribed deposition testimony or exhibits to depositions  
17 that reveal Protected Material shall be separately bound by the court reporter and  
18 may not be disclosed to anyone except as permitted under this Stipulated Protective  
19 Order; and

20 (j) any mediator or settlement officer, and their supporting  
21 personnel, mutually agreed upon by any of the parties engaged in settlement  
22 discussions.

23       7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
24 ONLY" Information or Items. Unless otherwise ordered by the Court or permitted in  
25 writing by the Designating Party, a Receiving Party may disclose any information or  
26 item designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" only  
27 to:

28 (a) the Receiving Party's Outside Counsel of Record, as well as

1 employees of said outside counsel to whom it is reasonably necessary to disclose the  
2 information for this Action;

3 (b) Experts (as defined in this Order) of the Receiving Party to  
4 whom disclosure is reasonably necessary for this Action and who have signed the  
5 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

6 (c) the Court and its personnel assigned to this Action;

7 (d) court reporters, their staffs, and Professional Vendors to whom  
8 disclosure is reasonably necessary for this Action and who have signed the  
9 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

10 (e) the author or recipient of a document containing the information  
11 or the original source of the information; and

12 (f) any mediator or settlement officer, and their supporting  
13 personnel, mutually agreed upon by any of the parties engaged in settlement  
14 discussions.

15 8. **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**  
16 **IN OTHER LITIGATION**

17 If a Party is served with a subpoena or a court order issued in other litigation  
18 that compels disclosure of any information or items designated in this Action as  
19 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
20 ONLY", that Party must:

21 (a) promptly notify in writing the Designating Party. Such  
22 notification shall be given within 5 business days after receiving the subpoena or  
23 order and shall include a copy of the subpoena or court order;

24 (b) promptly notify in writing the party who caused the subpoena or  
25 order to issue in the other litigation that some or all of the material covered by the  
26 subpoena or order is subject to this Protective Order. Such notification shall include  
27 a copy of this Stipulated Protective Order; and

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(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party's permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

12 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE  
13 PRODUCED IN THIS LITIGATION

24 (1) promptly notify in writing the Requesting Party and the  
25 Non-Party that some or all of the information requested is subject to a  
26 confidentiality agreement with a Non-Party;

27 (2) promptly provide the Non-Party with a copy of the  
28 Stipulated Protective Order in this Action, the relevant discovery request(s), and a

1 reasonably specific description of the information requested; and

2 (3) make the information requested available for inspection by  
3 the Non-Party, if requested.

4 (c) If the Non-Party fails to seek a protective order from this Court  
5 within 14 days of receiving the notice and accompanying information, the Receiving  
6 Party may produce the Non-Party's confidential information responsive to the  
7 discovery request. If the Non-Party timely seeks a protective order, the Receiving  
8 Party shall not produce any information in its possession or control that is subject to  
9 the confidentiality agreement with the Non-Party before a determination by the  
10 Court. Absent a Court order to the contrary, the Non-Party shall bear the burden and  
11 expense of seeking protection in this Court of its Protected Material.

12 10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

13 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
14 Protected Material to any person or in any circumstance not authorized under this  
15 Stipulated Protective Order, the Receiving Party must immediately (a) notify in  
16 writing the Designating Party of the unauthorized disclosures; (b) use its best efforts  
17 to retrieve all unauthorized copies of the Protected Material; (c) inform the person or  
18 persons to whom unauthorized disclosures were made of all the terms of this Order;  
19 and (d) request such person or persons to execute the "Acknowledgment and  
20 Agreement to Be Bound" that is attached hereto as Exhibit A.

21 11. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
**PROTECTED MATERIAL**

22 When a Producing Party gives notice to Receiving Parties that certain  
23 inadvertently produced material is subject to a claim of privilege or other protection,  
24 and that such material was inadvertently produced without the appropriate  
25 Confidentiality designation, the obligations of the Receiving Parties are those set  
26 forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended  
27 to modify whatever procedure may be established in an e-discovery order that

1 provides for production without prior privilege review. Pursuant to Federal Rule of  
2 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of  
3 disclosure of a communication or information covered by the attorney-client  
4 privilege or work product protection, the parties may incorporate their agreement in  
5 the stipulated protective order submitted to the Court.

6 **12. MISCELLANEOUS**

7       **12.1 Right to Further Relief**. Nothing in this Order abridges the right of any  
8 person to seek its modification by the Court in the future. The Parties agree to meet  
9 and confer prior to seeking to modify this Order for any reason.

10      **12.2 Right to Assert Other Objections**. By stipulating to the entry of this  
11 Protective Order no Party waives any right it otherwise would have to object to  
12 disclosing or producing any information or item on any ground not addressed in this  
13 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
14 ground to use in evidence of any of the material covered by this Protective Order.

15      **12.3 Filing Protected Material**. A Party that seeks to file under seal any  
16 Protected Material must comply with Civil Local Rule 79-5. Protected Material may  
17 only be filed under seal pursuant to a court order authorizing the sealing of the  
18 specific Protected Material at issue. If a Party's request to file Protected Material  
19 under seal is denied by the Court, then the Receiving Party may file the information  
20 in the public record unless otherwise instructed by the Court.

21 **13. FINAL DISPOSITION**

22      After the final disposition of this Action, as defined in paragraph 4, within 60  
23 days of a written request by the Designating Party, each Receiving Party must return  
24 all Protected Material to the Producing Party or destroy such material. As used in  
25 this subdivision, "all Protected Material" includes all copies, extracts, abstracts,  
26 compilations, summaries, and any other format reproducing or capturing any of the  
27 Protected Material. Whether the Protected Material is returned or destroyed, the  
28 Receiving Party must submit a written certification to the Producing Party (and, if

1 not the same person or entity, to the Designating Party) by the 60 day deadline that  
2 (1) identifies (by category, where appropriate) all the Protected Material that was  
3 returned or destroyed and (2) affirms that the Receiving Party has not retained any  
4 copies, extracts, abstracts, compilations, summaries or any other format reproducing  
5 or capturing any of the Protected Material. Notwithstanding this provision, Counsel  
6 are entitled to retain an archival copy of all pleadings, motion papers, trial,  
7 deposition, and hearing transcripts, legal memoranda, correspondence, deposition  
8 and trial exhibits, expert reports, attorney work product, and consultant and expert  
9 work product, even if such materials contain Protected Material. Any such archival  
10 copies that contain or constitute Protected Material remain subject to this Protective  
11 Order as set forth in Section 4 ("DURATION").

12 14. VIOLATION. Any violation of this Order may be punished by any and all  
13 appropriate measures including, without limitation, contempt proceedings and/or  
14 monetary sanctions.

15 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

16

17 DATED: September 6, 2017 JEONG & LIKENS, L.C.

18

19 By: /s / C. Yong Jeong  
20 C. YONG JEONG  
21 Attorneys for Plaintiff  
UNICOLORS, INC.

22

23 DATED: September 6, 2017 FREEMAN, FREEMAN & SMILEY, LLP

24

25 By: /s / Todd M. Lander  
TODD M. LANDER  
26 Attorneys for Defendant and Third-Party  
27 Plaintiff BURLINGTON COAT  
28 FACTORY DIRECT CORPORATION

1 DATED: September 6, 2017

2 THE LAW OFFICE OF KEVIN M. WELCH

3 By: /s / Kevin M. Welch

4 KEVIN M. WELCH

5 Attorneys for Defendant

6 COTTON EXPRESS CORPORATION

7 and Third-Party Defendant WINGS

8 MANUFACTURING CORPORATION

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FREEMAN, FREEMAN & SMILEY, LLP  
1888 CENTURY PARK EAST, SUITE 1900  
LOS ANGELES, CALIFORNIA 90067  
(310) 255-6100

1 I hereby attest that all signatories listed above, on whose behalf this notice is  
2 being submitted, concur in the filing's content and have authorized the filing.

3 DATED: September 6, 2017 FREEMAN, FREEMAN & SMILEY, LLP

4

5 By: /s / Penny M. Costa  
6 PENNY M. COSTA  
7 Attorneys for Defendant and Third-Party  
8 Plaintiff BURLINGTON COAT  
9 FACTORY DIRECT CORPORATION

10 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

11

12 DATED: 9/20/2017

13   
14 Honorable Stephen V. Wilson  
15 United States District Judge

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FREEMAN, FREEMAN & SMILEY, LLP  
1888 CENTURY PARK EAST, SUITE 1900  
LOS ANGELES, CALIFORNIA 90067  
(310) 255-6100

**EXHIBIT A**

## **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
4 \_\_\_\_\_ [print or type full address], declare under penalty of  
5 perjury that I have read in its entirety and understand the Stipulated Protective Order  
6 that was issued by the United States District Court for the Central District of  
7 California on [ date ] in the case of *Unicolors, Inc. v. Cotton Express Corporation,*  
8 *et al.*, 2:17-cv-02744-SVW-AGR. I agree to comply with and to be bound by all the  
9 terms of this Stipulated Protective Order and I understand and acknowledge that  
10 failure to so comply could expose me to sanctions and punishment in the nature of  
11 contempt. I solemnly promise that I will not disclose in any manner any  
12 information or item that is subject to this Stipulated Protective Order to any person  
13 or entity except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court  
15 for the Central District of California for the purpose of enforcing the terms of this  
16 Stipulated Protective Order, even if such enforcement proceedings occur after  
17 termination of this action. I hereby appoint \_\_\_\_\_ [print  
18 or type full name] of \_\_\_\_\_ [print or type full address  
19 and telephone number] as my California agent for service of process in connection  
20 with this action or any proceedings related to enforcement of this Stipulated  
21 Protective Order.

**22** | Date: \_\_\_\_\_

23 | City and State where sworn and signed: \_\_\_\_\_

**24** Printed name: \_\_\_\_\_

**25** | Signature: \_\_\_\_\_

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27 ||

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